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STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION

BEVERLY EAVES PERDUE  
GOVERNOR

1501 MAIL SERVICE CENTER, RALEIGH, N.C. 27699-1501

EUGENE A. CONTI, JR.  
SECRETARY

April 12, 2011

The Honorable Daniel R. Elliot, III  
Chairman  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423

ENTERED  
Office of Proceedings

APR 12 2011

Part of  
Public Record

Subject: Ex Parte No. 705, Competition in the Rail Industry

Dear Mr. Elliot:

Thank you for the opportunity for the North Carolina Department of Transportation (NCDOT) to participate in the above-referenced proceeding. The regulatory program of the Board with respect to competitive access is profoundly important to the State of North Carolina and its citizens. On behalf of the State of North Carolina, let me reiterate how pleased I am that the Board has initiated this proceeding to determine whether changes are needed to current competitive access and related policies of the Board.

In addition to the continuing investments that North Carolina makes in transportation infrastructure, both North Carolina's executive and legislative branches have recently made targeted efforts to enhance freight transportation in our state. The NC General Assembly commissioned the 2008 Statewide Logistics Plan, which offered wide-ranging recommendations. In December 2009, Governor Beverly Perdue established by Executive Order 32 the Governor's Logistics Task Force. This body will make recommendations in December 2011 in order to enhance transportation efficiencies, create jobs, and enable North Carolina to better compete in the global economy. Consequently, I believe that the Board's proceedings to review and potentially make changes to improve rail competitiveness is both timely and of utmost importance.

COMMENTS

The Board's actions will affect many aspects of rail competition of critical importance to the State and its goals relative to logistics and freight rail transportation. Among these are:

Development of a competitive pricing structure for the rail component of intermodal service at the Port of Wilmington

This concern includes competitive pricing compared to truck rates as well as competitive pricing compared to other South Atlantic port rates. There is currently only one Class 1 railroad that could provide intermodal rail to/from the Port of Wilmington to/from Charlotte and beyond. Despite bridges being raised to allow for double-stacking along this corridor from Wilmington to Charlotte, that service is not established because the rail provider quoted an intermodal rail rate

to establish intermodal service from the Port of Wilmington to Charlotte (and beyond) that was more than double the truck rate for the same origin/destination. In addition, the quoted rate was more than double the rail rate for other South Atlantic ports (specifically Savannah) to the same origin/destination (i.e., Charlotte). Without competitive rail rates, the Port of Wilmington is not able to attract ocean carriers that can reach beyond a one day truck trip, limiting the market opportunities not only for imports but also for exports, which drive container volume over the port. As a result, not as many ocean carriers will bring vessels to NC, limiting the number of trade lanes that can be reached. Most ocean carriers are looking to access markets other than just NC (i.e., Midwest and Mississippi Valley), and this access is achieved by intermodal rail (because trucks are too expensive). This lack of trade lanes and ocean carrier services severely limits the ability of NC businesses to use NC ports to reach global markets. This translates into jobs lost for NC to other South Atlantic port states and also translates into higher costs for our state's businesses to move goods.

Establishment of a competitive pricing methodology for freight service to the port at Morehead City and to the North Carolina Global TransPark (GTP)

This is a similar issue to the one in Wilmington. A good example is the recent development of Spirit Aerosystems at the GTP. Initially, the cargo was planned to move via rail from the GTP to the Port of Morehead City. NCDOT made a number of improvements to the rail line at significant expense to accommodate this movement (that will not make a ROI), but the private rail operator would not provide a rail rate that was competitive to the truck rate; therefore, the Spirit movements are expected to move from GTP via truck to the Port of Morehead for export. The quoted rail rate was reported to be up to ten times the trucking rate.

Norfolk Southern Railway has freight rights along the North Carolina Railroad-owned corridor from Morehead City to Charlotte. NCDOT has invested more than \$100M in this corridor. The North Carolina Railroad has invested over \$65 million to capital improvements on the railroad since 2002, and it is projected to invest another \$85 million by 2015. Additionally, the corridor has drawn \$623,500,000 in ARRA funds.

Federal, state, and local governmental investments of \$248M in the GTP have included \$187.8M in infrastructure enhancement investments to ensure multi-modal access to and from the GTP. In addition to highway improvements and air transportation-related investments, a rail spur (to be completed in January 2012) will provide rail access to the Port of Morehead City via the North Carolina Railroad.

Determining, in an era of public-private partnerships (PPPs), the proper method of maximizing the value of the public investments in publicly-assisted ventures, such as the Charlotte/Douglas Airport intermodal (rail-truck) and the GTP facilities

*Maximizing the Value of Public Investments*

The State of North Carolina through the NCDOT and the State Ports Authority (SPA) is partnering with Norfolk Southern Railway (NSR), CSX Transportation (CSXT), and the City of Charlotte to make public investments that improve intermodal infrastructure. The public investments include direct grants, tax credits, highway and safety improvements, property transfers, and project development support.

The Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users (SAFETEA – LU) PL 109-59 through Section 1306 Freight Intermodal Distribution Pilot Grant

Program established grants to implement a freight intermodal distribution pilot grant program. Sections 1701 and 1702 of SAFTEA-LU establishes High Priority funds, which require that federal funds be available for certain specified transportation activities.

The Charlotte Douglas International Airport Freight Intermodal Facility (serving NSR) and the South Piedmont Freight Intermodal Center (serving CSXT) are projects eligible for public investments under SAFETEA-LU. The useful life of these projects is defined as fifteen (15) years for purposes of depreciating the federal interest. Under the program federal funding of \$14 million is granted to benefit NSR and \$4 million to benefit CSXT.

The North Carolina General Assembly enacted Session Law 2007-0323 which amended Chapter 105 of the General Statutes to add Tax Incentives For Railroad Intermodal Facility. The tax incentives include tax credits for capital investments and tax refunds on sales and use taxes. NSR has indicated that it plans to use the state tax credits as well as the sales and use tax refunds. When the project is completed it is estimated that federal funds will contribute \$14 million and NSR will invest \$85 million to complete the project after which they will qualify for \$46 million in state tax credits. There is no current estimate of the value of the sales and use tax refunds although Mecklenburg County has an 8.25% rate.

The NSR project at Charlotte Douglas International Airport (CLT) is construction of an approximately 160 acre rail/truck served freight Intermodal Facility (IMF) consisting of loading/unloading, support, and running tracks; parking for trailers and containers; administration, operations, and maintenance buildings; and the related ancillary components. The facility is beneficially situated near Interstate 485 between the second and a new third runway at CLT and alongside NSR's Crescent Corridor. See <http://www.thefutureneedsus.com/crescent-corridor/>.

The CSXT project consists of doubling the capacity at its Hovis Road Intermodal Facility in Charlotte, North Carolina. The existing terminal is 22 acres; CSXT has optioned over 140 acres for the new terminal. The existing terminal can park 500 units; the new terminal will park 1639. The existing terminal has 2000 feet of load/unload track; the new terminal has 5300 feet. CSXT will receive a federal grant of \$4 million and invest a total of \$30 million. While CSXT will qualify for a 50% state tax credit on capital investment and a refund of sales and use taxes, it has not indicated whether or not it plans to file. This intermodal terminal is a component of CSXT's National Gateway. See <http://www.nationalgateway.org/>

The NSR intermodal project links via Columbia to the Port of Charleston, South Carolina. The CSXT intermodal project connects through Charlotte to the Port of Wilmington, North Carolina. NSR provides little if any intermodal service to Morehead City (MHC).

The two intermodal facilities are proximate to each other with NSR and CSXT interchanging in CSXT's Tryon Yard facility about 5 rail miles distant from CLT.

Both intermodal facilities have important impacts on shippers and the retail marketplace. From a public policy perspective, these investments may also have benefits to air quality, highway congestion, and ports utilization.

Through the North Carolina Railroad Company (NCRR) and the NCDOT, more than \$200 million has been invested over the past decade to modernize the railroad infrastructure, improve safety, and enhance capacity between CLT and MHC. In addition, more than \$623 million in safety,

capacity and reliability will be invested through the high speed and intercity passenger rail program from federal, state and NCRR sources.

#### *Competition*

North Carolina has two international ports each served by a single railroad making North Carolina ports captive shippers. The Port of Morehead City (MHC) is served by NSR and the Port of Wilmington (POW) by CSXT.

During the era of economic prosperity and peak shipping as demand exceeded supply, both NSR and CSXT "de-marketed" intermodal services in Charlotte. Thus higher rail shipping costs made shipping by highway relatively more economical to shippers. However, this modal shift also added to public costs by increasing congestion on highways and adding emissions.

An alternative public private investment that would maximize public benefits while also minimizing private investment would be to create a "union" intermodal facility, one facility that could be scaled to serve both carriers, optimally sited and not duplicate public and private costs. During the period when NSR and CSXT were developing their intermodal projects, the public made repeated requests for the freights to consider a single investment, but neither would meet to discuss such a project.

Further, even though the NCDOT and the SPA partnered with CSXT to invest in rail clearance projects to enable double-stack rail operations to/from POW, CSXT has priced rail intermodal service at the POW greater than truck from other East coast ports. During the late 1990s, NCDOT also raised all highway bridges over CSXT to a standard height of 23' to enable double-stack intermodal operation. This non-competitive pricing effectively ignores SPA's assurance to CSXT of sufficient ocean carrier volumes that meet the company's threshold criteria for regular operation of such a service.

The actions of the NSR and CSXT effectively devalue the public investments in intermodal rail truck and the ports at MHC and POW as they cannot be competitively served. The railroad's actions also contribute to higher shipping costs and greater than necessary public investments required to achieve service goals and minimize pollution, and they add to highway congestion and maintenance costs. It is recommended that the STB evaluate and recommend policies that encourage freight carriers to work with the public to minimize public and private costs while maximizing benefits. Such policies also should include guidelines for freight carrier cooperation.

#### Assuring the public transparency in the pricing process and access to competition for rail customers

Railroads are very reluctant to change the flow of traffic on their networks/system to accommodate new business, especially when new business could jeopardize current volumes on the existing network. This makes it difficult for businesses in NC to use smaller ports like Morehead City and Wilmington because of the unwillingness of the rail to price the rail competitively. Other states have established volumes of cargo movement (such as Norfolk with coal, Savannah with containers), and the rail providers are reluctant to disrupt the established flow of equipment to accommodate new services. These scenarios are often repeated and significantly hamper economic development opportunities for our state.

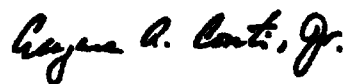
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**PUBLIC HEARING**

In addition to the comments provided above, please accept this letter as notice of NCDOT's desire to participate in the public hearing in the Surface Transportation Board Hearing Room on May 3, 2011. I will, unfortunately, be unable to attend, but a senior department official will serve as NCDOT's speaking representative for that hearing.

Thank you for your attention to this matter and for the opportunity for NCDOT to participate in the Board's decision making process.

Sincerely,

A handwritten signature in black ink, reading "Eugene A. Conti, Jr." in a cursive script.

Eugene A. Conti, Jr.

EAC/cd

Cc: Governor Beverly E. Perdue